

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM: Monroe D. Kiar, Town Attorney, (954) 584-9770

SUBJECT: Resolution

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING AND RATIFYING THE STIPULATION OF SETTLEMENT BETWEEN McDONALD'S RESTAURANT, McDONALD'S CORPORATION, DAVIE COMMUNITY REDEVELOPMENT AGENCY AND THE TOWN OF DAVIE IN CODE COMPLIANCE CASE NUMBER 04-521, AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: The Town of Davie initiated a Code Compliance action under Case Number 04-521, alleging that the lighting presently installed at McDonald's Restaurant at 4101 SW 64th Avenue, Davie, Florida 33314, does not conform to the requirements of Section 12-390 of the Davie Land Development Code. Section 12-390 (1) indicates the pole mounted fixtures in a vehicular use area are not to exceed a mounting height of 15 feet, and Section 1-390 (7) requires conformance with the Western Theme Development Manual. The existing poles are 30 feet in height and do not conform to the Western Theme Development Manual. Said poles however, were installed with the benefit of a permit which was issued in error by the Town of Davie. The Town of Davie Code Compliance Division filed an action to obtain compliance with the Land Development Code with the Special Magistrate. The parties thereafter entered into extensive negotiations and now wish to amicably settle and resolve this matter. The Davie Community Redevelopment Agency retained the service of an electrical engineer to undertake an investigation and to obtain prices of purchasing and installing poles and fixtures which meet the Code requirements for the poles and fixtures, as well as meeting the photometric lighting requirements to the site. The cost for retaining the services of the engineer, including his preparation of a photometric plan, are to be absorbed by the Davie Community Redevelopment Agency. Further, the Davie Community Redevelopment Agency shall purchase the light poles and fixtures, including the lamps, and shall deliver them to the site. McDonald's Corporation shall then submit a site lighting permit application to the Town of Davie. McDonald's Restaurant and McDonald's Corporation shall be obligated to remove existing poles and install the new poles in accordance with the Town's Code of Ordinances and the requirements of the Florida Building Code, and shall be responsible for all costs associated with the installation and wiring of the new poles and fixtures.

The Town of Davie has been joined as a party for the purpose of waiving all permit fees associated with this matter and with the removal of the existing light poles and fixtures and the installation of the replacement light poles and fixtures, including the lamps. The Town will also furnish signed and sealed site lighting photometric plans, wind load calculations and fixture specifications. After approval of the Stipulation of Settlement by all parties, including the Town of Davie, Stipulation of Settlement shall be submitted to the Town of Davie Special Magistrate and incorporated into an Agreed Order approving same. The proposed Stipulation of Settlement which is attached to the Resolution as Exhibit "A", and which is the result of settlement negotiations between the Town Attorney's Office, members of the CRA, and the property owners is believed to be to the beneficial interest of all parties and will assist in resolving this dispute.

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT: N/A. The Town has previously received permit fees with the installation of the existing poles and fixtures.

RECOMMENDATION(S): Motion to approve the resolution.

ATTACHMENTS: Resolution and Stipulation of Settlement

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING AND RATIFYING THE STIPULATION OF SETTLEMENT BETWEEN McDONALD'S RESTAURANT, McDONALD'S CORPORATION, DAVIE COMMUNITY REDEVELOPMENT AGENCY AND THE TOWN OF DAVIE IN CODE COMPLIANCE CASE NUMBER 04-521, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Davie initiated Code Enforcement Case Number 04-521, contending that the lighting presently installed at McDonald's Restaurant at 4101 SW 64th Avenue, Davie, Florida 33314, fails to conform to the requirements of Section 12-390 of the Davie Land Development Code; and

WHEREAS, the parties to the litigation have entered into extensive negotiation and now wish to amicably settle and resolve this matter; and

WHEREAS, a proposed Stipulation of Settlement is attached hereto as Exhibit "A"; and

WHEREAS, McDonald's Restaurant located at 4101 SW 64th Avenue, Davie, Florida 33314, McDonald's Corporation of Tampa, Florida, and the Davie Community Redevelopment Agency have all executed the proposed Stipulation of Settlement; and

WHEREAS, it is the belief of the Town of Davie and all parties that the Stipulation of Settlement meets the beneficial interest of all parties and will assist in resolving this dispute; and

WHEREAS, the Town of Davie has been joined as a party to the settlement solely for the purpose of waiving all permit fees associated with this matter and with the removal of the existing light poles and fixtures, and the installation of the replacement light poles and fixtures, including the lamps.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA,

SECTION 1. The Town Council hereby adopts and ratifies the Stipulation of Settlement entered into between McDonald's Restaurant, McDonald's Corporation, the Davie Community Redevelopment Agency, and the Town of Davie which is attached hereto as Exhibit "A".

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2005.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2005.

TOWN OF DAVIE
Development Services Department
Code Compliance Division

CASE NO: 04-521

Franchise Realty Interstate Corp.
c/o Rio Vista Management Group I
113 Southwest 11th Court, Suite C
Fort Lauderdale, Florida 33315

Boulevard Food Systems, Inc.
c/o Jack R. Loving
1323 Southwest Third Avenue
Fort Lauderdale, Florida 33316

Rio Vista Management Group, Inc.
c/o Jack R. Loving
1323 Southwest Third Avenue
Fort Lauderdale, Florida 33316

Boulevard Food Systems, Inc.
113 Southwest 11th Court, Suite C
Fort Lauderdale, Florida 33315

McDonald's Restaurant
4101 Southwest 64th Avenue
Davie, Florida 33314

Respondents.

_____ /

STIPULATION OF SETTLEMENT

It is stipulated and agreed by and between The Town of Davie, the Davie Community Redevelopment Agency, McDonald's Restaurant and McDonald's Corporation, as follows:

1. The parties agree that the lighting presently installed at McDonald's Restaurant at 4101 Southwest 64th Avenue, Davie, Florida 33314, does not conform to the requirements of Section 12-390 of the Davie Land Development Code. Section 12-390 (1) indicates the pole mounted fixtures in a vehicular use area are not to exceed a mounting height of 15 feet, and Section 1-390 (7) requires conformance with the Western Theme Development Manual. The existing poles are 30 feet in height and do not conform to the Western Theme Development Manual. Said poles were installed with the benefit of a permit which was issued in error by the Town of Davie. The Town of Davie Code Compliance Division filed an action to obtain compliance with the Land Development Code with the Special Magistrate.

2. The parties now wish to amicably settle and resolve this matter. The Davie Community Redevelopment Agency retained the services of an electrical engineer, to undertake an investigation and to obtain prices of purchasing and installing poles and fixtures which meet the Code requirements for the poles and fixtures, as well as meeting the photometric lighting requirements to this site. A copy of the plan

is annexed hereto as Exhibit "A". The plan includes detail for the poles and fixtures, as well as a photometric plan, all of which would meet requirements of the Town of Davie. The plan utilizes fluted concrete poles which are less than 15 feet in height with the fixture mounted at the top of the pole. There are a total of 11 poles shown on the plan. The light poles are placed at the same location as the existing poles and there are 2 additional light poles, for a total of 11 poles. One of the additional poles is to be placed near the menu board and the second additional pole to be placed along the western property line. Ten of the poles are to have 250 watt lamps, while the pole along the western property line shall have a 100 watt lamp. The engineer's investigation indicates using the same pole location saves cost in wiring and should make it simple to remove the existing pole and replace it with a new pole. The cost for retaining the services of the engineer, Mr. Norman Bray, for preparation of the afore-described plans shall be absorbed by the Davie Community Redevelopment Agency. The Town of Davie will also furnish signed and sealed site lighting photometric plans, wind-load calculations and fixture specifications.

3. The parties agree that the Davie Community Redevelopment Agency shall purchase the light poles and fixtures outlined above and which are set forth in Exhibit "A", including the lamps, and shall deliver them to the site. McDonald's Corporation agrees to submit a site lighting permit application to the Town of Davie within 15 days of the approval of the Agreed Order by the Special Magistrate approving this Stipulation of Settlement, with the condition that the Town of Davie will agree to waive the permit fees associated with this permit. McDonald's Restaurant and McDonald's Corporation will commence the installation of the light poles and fixtures within six (6) months of the permit issuance, and will be responsible for all costs associated with the installation and wiring of the new poles and fixtures. McDonald's Restaurant and McDonald's Corporation shall be obligated to remove existing poles and install new poles in accordance with the Town's Code of Ordinances and the requirements of the Florida Building Code.

4. The Town of Davie has been joined as a party to this Settlement Agreement solely for the purpose of waiving all permit fees associated with this matter and with the removal of the existing light poles and fixtures and the installation of the replacement light poles and fixtures, including the lamps.

5. The parties agree that each party shall absorb its own attorney's fee associated with this litigation and the preparation of this Settlement Agreement. Further, each side will absorb their own costs associated with this matter unless otherwise set forth above. In the event any party seeks to enforce the terms of this Agreement in a court of law, venue shall lie in the State Courts of the 17th Judicial Circuit, in and for Broward County, Florida, and the prevailing party shall be entitled to recover its reasonable attorney's fees and costs on both the trial and appellate level.

6. This Settlement Agreement shall be submitted to the Town of Davie Special Magistrate and incorporated into an Agreed Order approving same.

Dated this _____ day of _____, 2005.

MCDONALD'S RESTAURANT
4101 Southwest 64th Avenue
Davie, Florida 33314

By: [Signature]
Daniel Ashlin, McDonald's Licensee

MCDONALD'S CORPORATION
10150 Highland Manor Drive, Suite 470
Tampa, Florida 33610

By: [Signature]
Catherine A. Griffin, Vice President



THE TOWN OF DAVIE

By: _____
Its Mayor or his Authorized Designee

DAVIE COMMUNITY
REDEVELOPMENT AGENCY

By: Will Allen
Redevelopment Administrator

Exhibit “A”
can be reviewed
in the
Town Clerk’s Office

* * * * *

THIS PAGE

INTENTIONALLY

LEFT BLANK

* * * * *